

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In re)	
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)	
Smith Media License Holdings, LLC)	CSR- _____ -M
)	
Must-Carry Complaint Concerning)	
KEYT-TV, Santa Barbara, California)	
)	

To: Office of the Secretary
Attn: Media Bureau

COMPLAINT

Smith Media License Holdings, LLC ("Smith"), licensee of KEYT-TV ("KEYT"), Santa Barbara, California, pursuant to Section 614 of the Communications Act of 1934, as amended, and Sections 76.7 and 76.61(a) of the rules of the Federal Communications Commission (the "Commission"), hereby files this Complaint against Time Warner Cable, Inc. ("TWC").

TWC has failed to meet its carriage obligations under the Communications Act (the "Act") and the Commission's rules. TWC's cable systems serving the communities of Ojai, Oxnard, Santa Paula, Camarillo, and Ventura, California (the "Ventura Systems") currently carry KEYT in analog and/or standard definition digital format only, in violation of TWC's obligation to carry KEYT in high definition. The Media Bureau consequently should require TWC to carry KEYT's signal in high definition, in addition to its current carriage in analog and/or standard definition digital format. TWC has denied thousands of individuals the opportunity to view the Station in high definition.

I. SMITH HAS PROPERLY NOTIFIED TWC REGARDING THE VIOLATION OF ITS CARRIAGE RIGHTS, AND THE COMPLAINT IS TIMELY FILED.

In a letter dated February 29, 2012, Smith notified TWC that TWC had failed to comply with the Commission's must-carry rules. First, Smith explained that KEYT had must-carry status for the carriage cycle beginning January 1, 2012, and therefore its primary signal must be retransmitted in

high definition to the extent that it is broadcast in high definition.¹ Smith therefore demanded that TWC afford KEYT the high definition carriage to which it was entitled under the Commission's rules.² Smith requested a response in writing within thirty days of TWC's receipt of the Demand (*i.e.*, by April 1, 2012). Smith did not receive a timely written response to its demand.³

The Commission's rules afford a television station up to sixty days from the expiration of the cable operator's thirty-day response period or denial of the station's carriage request to file a complaint.⁴ Because Smith is submitting this Complaint within sixty days of April 1, 2012 (*i.e.*, by Thursday, May 31, 2012) when TWC's written response was due, this Complaint is timely filed.

II. KEYT IS ELIGIBLE TO DEMAND CARRIAGE OF ITS SIGNAL IN HIGH DEFINITION.

The Act and the Commission's rules provide that a "local commercial television station," for purposes of cable must-carry requirements, is any full-power commercial television station (1) located within the same television market as the cable system, (2) carriage of which would not increase the cable operator's copyright liability, (3) that delivers an adequate signal to the cable system's headend.⁵

KEYT satisfies all of these criteria. The Commission has defined a local commercial television station's market for the purposes of the must-carry rules as the station's Designated Market Area ("DMA"), as defined by Nielsen Media Research ("Nielsen"),⁶ as such market may be modified

¹ See Exhibit 1 (Letter from Michael Granados, Smith Media, LLC, to Carrie Bocian, Senior Director/Programming, Time Warner Cable, February 29, 2012). A certified receipt from the United States Postal Service confirms that TWC received Smith's February 29, 2012 demand letter on March 2, 2012.

² *Id.*

³ See Declaration of Michael Granados, attached hereto ("Granados Declaration").

⁴ 47 C.F.R. § 76.61(a)(5).

⁵ See 47 U.S.C. § 534(h)(1); 47 C.F.R. § 76.55(c).

⁶ 47 C.F.R. § 76.55(e).

by the Commission.⁷ Even though Nielsen has assigned KEYT to the Santa Barbara-Santa Maria-San Luis Obispo, California DMA and even though the Ventura Systems serve subscribers located in the Los Angeles, California DMA, the Ventura Systems are located within KEYT's market for purposes of the Commission's must carry rules. In 1995, the Commission modified KEYT's must-carry market to include the Ventura Systems.⁸ Smith therefore is entitled to assert KEYT's statutory must-carry rights on the Ventura Systems. For the same reasons, KEYT also qualifies as a "local signal" under Section 111 of the Copyright Act, such that carriage of KEYT's signal does not expose TWC to increased copyright liability.⁹ KEYT has must-carry status on the Ventura Systems because Smith did not elect retransmission consent status with respect to the Ventura Systems.¹⁰ Finally, KEYT delivers an adequate signal to TWC's headends, as the Ventura Systems already carry KEYT pursuant to must-carry, albeit in analog and/or standard definition format. Consequently, KEYT is entitled to invoke the must-carry rights accorded to "local commercial television stations" by the Act and the Commission's rules.

The Act and the Commission's rules require that "a broadcast signal delivered in HDTV must be carried in HDTV."¹¹ Of course, retransmission of a must-carry signal in HDTV format does not

⁷ 47 C.F.R. § 76.59(a).

⁸ See *Smith Broadcasters of Santa Barbara Limited Partnership*, 10 FCC Rcd 9447 (Cab. Serv. Bur. 1995) (adding Camarillo, Ojai, Oxnard, Santa Paula, and Ventura to KEYT's mandatory carriage market).

⁹ 17 U.S.C. § 111.

¹⁰ See Granados Declaration.

¹¹ Carriage of Digital Television Broadcast Signals, *First Report and Order*, 16 FCC Rcd 2598, ¶ 73 (2001); Carriage of Digital Television Broadcast Signals, *Third Report and Order*, 22 FCC Rcd 21064, ¶ 7 (2007) ("*Viewability Order*"); see 47 U.S.C. § 534(b)(4)(A). The Ventura Systems are not eligible for the "small system" exemption from the HD carriage requirement provided by the *Fourth Report and Order* because the Ventura Systems are owned by a large cable operator and, upon information and belief, have an activated channel capacity greater than 552 MHz. See Carriage of Digital Television Broadcast Signals, *Fourth Report and Order*, 23 FCC Rcd 13618 (2008); see also NCTA, Top 25 Multichannel Video Programming Distributors as of Dec. 2011, <http://www.ncta.com/Stats/TopMSOs.aspx> (Time Warner Cable, Inc. is second largest cable operator in the country, with over 12,000,000 subscribers); Time Warner Cable, Inc., Ventura Channel

continued...

relieve a cable operator of its obligation to ensure that must-carry signals are viewable by all cable subscribers.¹² KEYT is broadcasting a high-definition signal.¹³ Therefore, as a local commercial television station with “must-carry” status, KEYT-TV is entitled to carriage of its HDTV programming in HD format on the Systems.

...continued

Lineup, http://www.timewarnercable.com/includes/clu/CLU_930.pdf (listing hundreds of channels, including dozens of high definition channels).

¹² See 47 U.S.C. § 534(b)(7); *Viewability Order*, 22 FCC Rcd 21064, ¶15-19.

¹³ See Declaration of Michael Granados, attached hereto.

IV. CONCLUSION

As demonstrated above, KEYT's signal has high definition carriage rights on the Ventura Systems. The Commission's rules, therefore, require that TWC retransmit KEYT's signal in high definition on the Ventura Systems. Smith remains hopeful that the parties can reach a mutually acceptable resolution. Nevertheless, in the face of TWC's refusal to comply with the Commission's rules, Smith is forced to submit this Complaint. The Bureau should issue an order without delay requiring TWC to commence carriage of KEYT's primary signal in high definition on the Ventura Systems.

Respectfully submitted,

SMITH MEDIA LICENSE HOLDINGS, LLC



Robert J. Folliard, III

DOW LOHNES PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036
202-776-2000

Its Attorney

May 30, 2012

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this Enforcement Complaint is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.



Robert J. Folliard, III

May 30, 2012

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re)
)
)


Smith Media License Holdings, LLC)

CSR- _____ -M

Must-Carry Complaint Concerning)
KEYT-TV, Santa Barbara, California)
_____)

DECLARATION OF MICHAEL GRANADOS

- VP - CEO*
1. My name is Michael Granados, and I am ~~President~~ *VP - CEO* of Smith Media License Holdings, LLC.
 2. I have reviewed the foregoing Must-Carry Complaint and found the factual matters set forth therein to be true to the best of my knowledge and belief. In addition, to the best of my knowledge, information and belief formed after reasonable inquiry, the Enforcement Complaint is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose. I declare under penalty of perjury that the foregoing is true and correct.
 3. KEYT-TV did not send any election letter to Time Warner Cable, Inc. regarding the cable systems it operates in the Ventura County portion of KEYT-TV's market.
 4. KEYT-TV did not receive a timely written response to my February 29 letter demanding carriage of KEYT-TV's primary channel in high definition.



Michael Granados
~~President~~ *VP - CEO*
Smith Media License Holdings, LLC
730 Miramonte Dr.
Santa Barbara, CA 93109

Dated: May 30, 2012

EXHIBIT 1

SMITH MEDIA, LLC.

February 29, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Carrie Bocian
Senior Director/Programming
Time Warner Cable
60 Columbus Circle
16th Floor
New York, NY 10023

/011-0110-0002-1411-7571

Re: KEYT-TV, Channel 27, Santa Barbara, California
High Definition Programming on Los Angeles DMA Cable Systems

Dear Ms. Bocian:

Smith Media License Holdings, LLC ("Smith") is pleased to announce that KEYT-TV, Santa Barbara, California (the "Station") is now broadcasting High Definition Television ("HDTV") programming. KEYT-TV is a full-power television station that has elected and/or defaulted to "must-carry" status in a number of communities in which Time Warner Cable owns and/or manages cable systems that serve the Los Angeles, California, Designated Market Area, including the communities of Ojai, Oxnard, Santa Paula, Camarillo and Ventura (the "Systems").

Having completed its transition to digital television service on February 17, 2009, the Station remains fully qualified for mandatory carriage on the Systems. (See Carriage of Digital Television Broadcast Signals, *Declaratory Order*, 23 FCC Rcd 14254, ¶ 12 (2008).) The FCC has made clear that "a broadcast signal delivered in HDTV must be carried in HDTV." (Carriage of Digital Television Broadcast Signals, *First Report and Order*, 16 FCC Rcd 2598, ¶ 73 (2001); Carriage of Digital Television Broadcast Signals, *Third Report and Order*, 22 FCC Rcd 13618, ¶ 7 (2007).) Consequently, as a local commercial television station with "must-carry" status, KEYT-TV is entitled to carriage of its HDTV programming in HD format on the Systems.

As the licensee of KEYT-TV, Smith hereby formally demands that Time Warner Cable launch and thereafter retransmit KEYT-TV's HDTV programming in HDTV format on a full-time channel in the HDTV broadcast basic channel neighborhood on all Systems as and to the same extent that each System retransmits other local television stations' primary channels in HDTV format.

Please confirm in writing that each System will honor KEYT-TV's HD carriage rights within thirty days of receipt of this letter. If you have any questions about KEYT-TV, please contact me at your earliest opportunity.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael Granados".

Michael Granados

PS Form 3800, August 2006 See Reverse for Instructions

NEW YORK NY 10023

60 COLUMBUS CIRCLE 16TH FLOOR

SENT TO: CARLE AGLIAN SENIOR MANAGER TIME WARNER CABLE

Postmark: FEB 29 2012

Postage: \$0.45

Certified Fee: \$2.95

Return Receipt Fee: \$2.95

Restricted Delivery Fee: \$0.00

Total Postage & Fees: \$5.75

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Product Description	Sales Receipt Sale Unit Qty Price	Final Price
NEW YORK NY 10023		\$0.45
Zone-8 First-Class Letter		
0.60 oz.		
Expected Delivery: Sat 03/03/12		
Return Rcpt (Green Card)		\$2.35
Certified		\$2.95
Label #:	70110110000214117571	
Issue PVI:		\$5.75

Total: \$5.75

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Cash \$20.75
Change Due: -\$15.00

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Total Postage & Fees	\$ 5.75

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 FEB 29 2012
 02/29/2012

Sent To
 CARLE BOCIAN SENIOR MANAGER TIME WARNER CABLE
 Street, Apt. No.,
 or PO Box No. 60 COLUMBUS CIRCLE 16TH FLOOR
 City, State, ZIP+4[®] NEW YORK NY, 10023

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MS CARLE BOCIAN
 SENIOR DIRECTOR / PROGRAMMING
 TIME WARNER CABLE
 60 COLUMBUS CIRCLE
 16TH FLOOR
 NEW YORK NY 10023

2. Article Number

(Transfer from service label) 7011 0110 0002 1411 7571

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x V. Jeter

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

V. Jeter

C. Date of Delivery

3-2

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

CERTIFICATE OF SERVICE

I certify that on this 30th day of May, 2012, I caused or will cause the foregoing Complaint to be served by email and first-class mail where indicated on the following:

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Carrie Bocian
Senior Director/Programming
Time Warner Cable
60 Columbus Circle
16th Floor
New York, NY 10023

City of Camarillo
Attn: City Attorney
601 Carmen Drive
Camarillo, CA 93010

City of Ojai
Attn: City Attorney
PO Box 1570
Ojai, CA 93024

City of Oxnard
Office of the City Attorney
300 West Third Street, Third Floor
Oxnard, CA 93030

City of Santa Paula
Attn: City Attorney
970 Ventura Street
Santa Paula, CA 9306

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Attn: City Attorney
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Room 213
Ventura CA 93002



Robert J. Folliard, III